



# City University of New York

## Compliance with the Clery Act

Report 2009-S-4



Thomas P. DiNapoli



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# State of New York Office of the State Comptroller

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## Division of State Government Accountability

November 19, 2009

Dr. Matthew Goldstein  
Chancellor  
City University of New York  
535 East 80th Street  
New York, NY 10075

Dear Chancellor Goldstein:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the City University of New York's Compliance with the Clery Act. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*





## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

#### **Audit Objectives**

The objectives of our audit were to determine whether the City University of New York's (CUNY) 14 senior colleges and graduate level schools were accurately reporting crime statistics and other relevant security and safety-related information required by the Clery Act, and whether CUNY's University Administration provided the colleges with sufficient Clery-related guidance and training.

#### **Audit Results - Summary**

We found multiple problems related to compliance with the Clery Act at many CUNY colleges. For example, we found that five of the six colleges we visited published inaccurate crime statistics by either under reporting or not properly categorizing this information. For six of the 14 colleges, we found discrepancies between the number of crimes reported to the federal Department of Education (Department) and what was reported on the college's annual security report (ASR). While the number of discrepancies was relatively low, the categories in which the discrepancies existed were significant and included crimes such as robberies, burglaries, arsons, forcible and non-forcible sex offenses and motor vehicle thefts. We further found that all 14 campuses did not disclose at least seven safety requirements and/or security statements that the Clery Act mandates them to disclose. We conclude that CUNY's University Administration needs to improve the formal guidance and training it provides to college personnel to help ensure that they comply with the Clery Act.

The purpose of the Clery Act is to provide important information about the safety and security of college communities to enable people to make informed decisions when choosing a college for educational or employment purposes. The Clery Act requires institutions of higher education to prepare, publish and distribute an ASR disclosing information about campus safety policies and procedures and campus crime statistics for the three most recent calendar years. (Note: For Clery-reporting purposes, crime statistics can include certain violations of law that are not routinely considered "crimes" for traditional law enforcement purposes.)

We visited six CUNY colleges to evaluate their compliance with Clery Act requirements, particularly with regard to the reporting of accurate crime statistics. The six colleges were the John Jay School of Criminal Justice, CUNY School of Law, Hunter, Baruch, Medgar Evers and Queens. Of these, Queens had the highest number of underreported crimes/violations. Queens didn't report 27 of the 33 crimes/violations (82 percent) that should have been reported.

The Clery Act also requires institutions to annually prepare and distribute its ASR to all students, faculty and staff by October 1<sup>st</sup> of each year. We found three colleges (Hunter, John Jay and Medgar Evers) did not provide direct notification to the entire college community regarding the existence and availability of the ASR, as required.

In addition, the Clery Act mandates that colleges create, maintain and make publicly available a daily crime log. Each college should have had one crime log for each year. Our review of these logs revealed multiple areas of noncompliance at five of the six colleges visited. At John Jay, public safety officials presented us with four crime logs; two sets for each of the two consecutive years in our audit scope. However, the first set for each year was created two weeks prior to our visit to the campus. Therefore, we concluded it was not reliable evidence. The second set, although historical, was insufficiently prepared to meet Clery Act requirements since the crime logs contained personal/confidential information that cannot be released to the public without first redacting this information. At Hunter, there were incident reports for 194 crimes in 2006 and 253 crimes in 2007 that were not listed on the crime log.

Based on our review, we conclude that campus officials did not adequately understand certain important aspects of the Clery Act's requirements. Certain colleges were also either unaware of the need to (or unsure of how to) define their public and non-campus property covered by Clery Act reporting requirements. CUNY needs to provide guidance and training to the colleges to help ensure they comply with the Act.

In 1999, the University Auditor issued Clery Act compliance audit reports at five of the 14 campuses. The University Auditor identified serious deficiencies at two colleges we visited (Hunter and Medgar Evers) and issued corrective recommendations. While both colleges issued responses with corrective actions to the audit findings, we found continuing or similar issues identified by the University Auditor. For example, the University Auditor cited Hunter for poor recordkeeping practices, non-compliance with ASR distribution requirements, and not obtaining crime statistics from local police precincts. We found these same deficiencies continued ten years later. For example, 447 crimes were documented on incident reports but were not reported on crime logs.

Our report contains eight recommendations to improve compliance with the Clery Act at CUNY colleges.

In response to our draft report, University Administration officials agreed to take action on our audit recommendations.

This report, dated November 19, 2009, is available on our website at: <http://www.osc.state.ny.us>.

Add or update your mailing list address by contacting us at: (518) 474-3271 or

Office of the State Comptroller

Division of State Government Accountability

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## Introduction

### Background

When choosing a college, the issue of campus security is important for students and their families. In 1990, Congress responded to this concern by enacting the Crime Awareness and Campus Security Act, which was later renamed the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). The federal statute is named for Jeanne Clery, a 19-year-old Lehigh University freshman who was raped and murdered in her campus residence hall in 1986. The purpose of the Clery Act is to provide important information about the safety and security of college communities that enables people to make informed decisions when choosing a college for educational and employment purposes.

The Clery Act requires all public and private colleges participating in federal Title IV student financial aid programs to prepare, publish and distribute an annual security report (ASR) disclosing information about campus safety policies and procedures and campus crime statistics for the three most recent calendar years, based on definitions from the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Handbook. These statistics include the following categories: criminal homicide, sexual offenses, robbery, aggravated assault, burglary, arson, motor vehicle theft, liquor law and drug law violations, and illegal weapons possession.

The Clery Act mandates that colleges disclose statistics for crimes reported by college or local police committed in certain geographic locations associated with the college. Colleges are required to make available to current students and employees a copy of the ASR by October 1<sup>st</sup> of each year, inform prospective students and employees of the availability of the report and provide them with a copy upon request. Additionally colleges are required to maintain and make publicly available a daily crime log and submit crime statistics to the federal Department of Education (Department) annually. The Department provides The Handbook for Campus Crime Reporting (Clery Handbook) to assist campuses in complying with Clery Act requirements.

The City University of New York (CUNY), the largest urban public university in the United States, comprises 20 institutions for Clery reporting purposes: 11 senior colleges, three graduate level schools and six community colleges. CUNY also has a central administrative office located in New York City (University Administration). During the fall 2007 semester, these 20 institutions provided higher education to more than 243,000 degree-credit students and 240,000 adult, continuing and professional education students. Our audit focused on compliance with the Clery Act by the 11

senior colleges and 3 graduate level schools (collectively the 14 campuses). (We did not include the community colleges within the scope of our audit.)

University Administration provides general oversight of CUNY operations, and the individual CUNY colleges are primarily responsible for complying with applicable laws, including the Clery Act. CUNY's University Administration Security and Public Safety Office (University Public Safety) is responsible for coordinating all public safety efforts throughout the CUNY system and setting training, hiring and operational standards. This includes the overall establishment, selection, training and maintenance of the security and public safety staff that comprises the University Public Safety Service. University Public Safety is also responsible for assisting campus public safety departments to implement Clery Act reporting procedures.

Additionally, CUNY's University Administration Auditor (University Auditor) conducts audits of college operations. The University Auditor also does audits and reviews to ensure that the University has complied with recommendations contained in prior audit reports, as well as those applicable recommendations suggested by federal, State and New York City agencies. The University Auditor has audited Clery Act activities of certain CUNY campuses.

**Audit  
Scope and  
Methodology**

Our audit period was from January 1, 2006 through June 24, 2009. Our audit determined whether CUNY's 14 campuses accurately reported crime statistics and security policies and procedures in accordance with the requirements of the Clery Act.

To accomplish our audit objectives, we reviewed the applicable federal statutes, regulations and amendments, the Clery Handbook and the UCR Handbook. We also interviewed University Administration officials, and we contacted officials at each of CUNY's 14 campuses to obtain ASRs. We visited six CUNY colleges (John Jay School of Criminal Justice, CUNY School of Law, Hunter, Baruch, Medgar Evers and Queens colleges). At these campuses, we interviewed college personnel and reviewed the public safety incident reports and crime logs that supported the colleges' reported crime statistics for calendar years 2006 and 2007. We reviewed documentation supporting the reported crime statistics obtained from local police departments. Additionally, for the 14 campuses, we compared the 2006 and 2007 crime statistics listed in their ASRs to those listed on the Department's Office of Postsecondary Education website, and we assessed the completeness and accuracy of the colleges' ASRs.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a

reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State’s accounting system; preparing the State’s financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

**Authority**

The audit was performed pursuant to the State Comptroller’s authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

**Reporting Requirements**

We provided a draft copy of this report to University Administration officials for their review and formal comment. We have considered their comments in preparing this report and have included the comments at the end of the report. University Administration officials generally agreed with our report’s recommendations and indicated the steps that will be taken to implement them.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chancellor of the City University of New York shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

**Contributors to the Report**

Major contributors to this report include Walter Irving, William Clynes, Danielle Rancy, Anthony Calabrese and Sue Gold.



## Audit Findings and Recommendations

### Reporting of Crime Statistics

#### Inaccurate Statistics

The Clery Act mandates colleges participating in federal Title IV student financial aid programs to annually prepare, publish and distribute an ASR disclosing crime statistics to the campus community no later than October 1<sup>st</sup>. The Department can issue civil fines up to \$27,500 per violation for a substantial misrepresentation of the number, location or nature of the reported crimes. The Department can also suspend violating colleges from participating in federal Title IV student financial aid programs, including Stafford, Perkins, and Parent (PLUS) loans as well as Pell Grants and Supplemental Education Opportunity Grants. In addition, the Clery Act mandates that colleges annually submit their crime statistics, via a Web based report, to the Department. The crime statistics for all participating colleges are available for public viewing on the Department's web site. One of the purposes for providing this information to the public is to permit simple comparisons of crime statistics among colleges.

We visited six CUNY colleges to evaluate their compliance with Clery Act requirements, particularly with regard to the reporting of accurate crime statistics. The six colleges were the John Jay School of Criminal Justice (John Jay), CUNY School of Law, Hunter, Baruch, Medgar Evers and Queens. These six colleges provide educational services to about 49 percent of the total student enrollment in CUNY's 14 campuses. For the six colleges, we reviewed and compared the statistics reported on the ASRs by the colleges to public safety incident reports and supporting documentation for calendar years 2006 and 2007. We found that five of the six colleges (Queens, John Jay, Baruch, Hunter and Medgar Evers) published inaccurate crime statistics by under-reporting this information for the two year period as shown in the following table:

<b>College</b>	<b>Total incidents</b>	<b>Incidents Not Reported</b>	<b>Major unreported crime</b>
Queens	33	27	15 burglaries
John Jay	20	19	17 burglaries
Baruch	17	16	9 burglaries
Hunter	22	8	3 aggravated assaults
Medgar Evers	9	2	1 burglary, 1 hate crime

In addition, four of the six colleges (Hunter, John Jay, Medgar Evers and Baruch) did not report a total of 52 disciplinary action referrals (violations of laws that did not result in arrests) for 2006 and 2007.

We also found that four colleges did not properly categorize and report information accurately.

- John Jay improperly reports crimes based on New York State Penal Law categories instead of the required definitions from the UCR Handbook.
- Hunter and John Jay reported hate crimes improperly in 2006 by not associating them with Clery-reportable crimes as required by the Act.
- Baruch reported a hate crime in 2006, but did not provide any indication as to which Clery-reportable crime the bias was associated with, or the basis of the bias (e.g., race, religion). We determined the hate crime was associated with a robbery and was based on gender.

Without accurate reporting of crimes for each college, parents, students and employees cannot make meaningful data comparisons among colleges.

#### Inconsistent Statistical Reporting

The Clery Act mandates that institutions of higher education annually submit the crime statistics compiled in their ASR to the Department via a web-based data collection system. The Department makes this information available to the public via the internet. The Department website allows the public to perform a variety of user-defined searches, such as comparisons among the various colleges.

For the 14 campuses, we examined their ASRs published by October 1, 2008 (which included statistics for the two previous years), to determine whether the 2006 and 2007 statistics disclosed on the ASRs agreed with those reported on the Department's website. We found discrepancies at six CUNY campuses (see Exhibit A for the listing of schools). While the number of discrepancies at these colleges was relatively low, the categories in which the discrepancies existed were significant and included crimes such as robberies, burglaries, arsons, forcible and non-forcible sex offenses, and motor vehicle thefts. Specifically, we found:

- In 2006, the New York City College of Technology reported three motor vehicle thefts, two robberies, and one burglary on Public Property in its ASR, but none to the Department.
- In 2006, Baruch reported one on-campus burglary in its ASR, but five burglaries to the Department and one on-campus non-forcible sex offense in its ASR, but none to the Department.

- In 2006, Hunter reported no on-campus liquor referrals in its ASR, but two such referrals to the Department, and only one on-campus drug referral in its ASR, but three to the Department.
- In 2006, City College reported two non-campus liquor referrals to Department, but none in its ASR. In 2007, City College reported no on-campus forcible sex offenses in its ASR, but two to the Department.
- In 2007, John Jay reported one on-campus burglary and one on-campus weapon referral in its ASR, but neither was reported to the Department.

The inconsistencies in reporting numbers to the Department could result in students, parents and prospective employees making decisions based on inaccurate information.

#### Other ASR Deficiencies

In addition to the disclosure of crime statistics, a major requirement of Clery Act compliance is the disclosure of certain security policy and procedure statements (security statements) as well as other safety reporting requirements in the ASR. The purpose of disclosing the security statements is to provide college communities with important information about crime reporting procedures, campus accessibility and security, evacuation procedures, and rules governing campus law enforcement. We identified a total of 49 such disclosures (27 security statements and 22 safety reporting requirements) that campuses are required to report. However, as shown in Exhibit A, when we examined the ASRs published by October 1, 2008, we found all 14 campuses were lacking at least seven disclosures, and two lacked more than 20 (Hunter lacked 26 disclosures and John Jay lacked 23 disclosures). (Note: Our audit did not include assessments of the programmatic effectiveness of the security statements and other information submitted.)

The required security statements should address matters such as drug and liquor abuse, warning systems (to be used during campus emergencies), emergency response and evacuation procedures, and guidance for victims of sexual assaults. However, we determined nine colleges did not include complete information regarding drug and liquor abuse education programs (City College, Hunter, John Jay, Medgar Evers, New York City College of Technology, Queens, The Graduate Center, CUNY School of Journalism, and CUNY School of Law) and two only partially complied (Baruch and Brooklyn). Two colleges (College of Staten Island and Hunter) omitted the security statement pertaining to the warning system to be used in the event of an emergency at the college and no college included all four required security statements relating to emergency response and evacuation procedures. In addition, two colleges lacked the six required policy statements pertaining

to victims of sexual assaults (John Jay did not have five and Hunter did not have four).

The Clery Act also mandates that colleges comply with safety reporting requirements. These requirements are intended to help colleges accurately depict the safety and security of their communities and provide mechanisms for college communities to report crimes. For example, the Clery Act mandates colleges annually report hate crime statistics for all required geographic locations and by the specific crime categories detailed in the UCR Handbook. Additionally, the Clery Act mandates that colleges designate campus security authorities and annually disclose statistics for crimes reported to these individuals. Campus security authorities are college employees who have significant responsibilities for student and college activities. They may include designated health services staff, residential life officials, public safety officers, and other officials. Colleges must also incorporate all Clery-required content into a complete document.

When we examined the ASRs published by October 1, 2008, we determined that 13 of the 14 campuses did not comply with one or more of the safety reporting requirements (See Exhibit A). The following are examples of some of the reporting deficiencies.

- Three colleges (CUNY School of Law, Baruch and College of Staten Island) did not report disciplinary action referrals or indicate whether any existed.
- Two colleges (Baruch and College of Staten Island) did not indicate whether crimes occurred in geographic locations other than on-campus (i.e., Public Property, non-campus, and student residential facilities).
- John Jay did not publish a complete ASR on-line, as required.
- CUNY School of Law did not indicate whether any of the reported criminal offenses were hate crimes.

Additionally, the Clery Act requires institutions to annually prepare, publish and distribute an ASR to all students, faculty and staff by October 1<sup>st</sup> of each year. However, we found three colleges did not provide direct notification to the entire college community regarding the existence and availability of the ASR, as required.

- Hunter did not distribute the ASR to the college community, or directly notify its members of the existence of the ASR. Instead, the ASR was published and copies were kept in the public safety office. The information is also posted to the public safety webpage.

- John Jay distributed the ASR to incoming freshmen, new employees, the Human Resources Department and posted it on the public safety webpage without any direct notification to the entire college community (which includes sophomores/juniors/seniors) of the existence of the ASR or its availability on the website.
- Medgar Evers distributed the ASR to incoming freshmen, the Bursar and public safety offices and posted it on the public safety webpage without any direct notification to the entire college community of the existence of the ASR or its availability on the website.

Without proper distribution of ASRs, these three colleges cannot ensure their entire college community is provided the information mandated by the Clery Act.

**Recommendations**

1. Adopt practices to ensure colleges are complying with Clery Act requirements each year. At a minimum, University Administration should annually receive the ASR from each college and ensure it is properly prepared and the crime statistics reported agree with those the college reported to Department.
2. Provide specific guidance and assistance to colleges on preparing ASRs. Consider developing a standardized approach for colleges to follow.
3. Require colleges noted in this report that have inaccurate information in their current ASRs or reported inaccurate information to Department to correct such information.

**Preparation of Criminal Logs and Incident Reports**

The Clery Act mandates that colleges create, maintain and make publicly available a daily crime log. The log must include the nature of the crime, the date reported, the date and time of occurrence, the general location of the crime, and the disposition of the complaint, if known. The intent of the crime log is to record alleged criminal incidents reported to college public safety officers. The Clery Act mandates colleges make the most recent 60 days of log entries available for public inspection upon request during normal business hours. Log entries older than 60 days must be made available within two business days of a request for inspection.

We examined the 2006 and 2007 daily crime logs of the six colleges we visited. Each college should have had one crime log for each year. Our review of these logs revealed multiple areas of noncompliance at five of the six colleges visited. At John Jay, public safety officials presented us with four crime logs; two sets for each year. However, the first set for each year was created two weeks prior to our visit to the campus instead of being a historical document. Therefore, we concluded it was not compliant evidence.

The second set, although historical, was insufficiently prepared to meet Clery Act requirements since the crime logs contained personal/confidential information that cannot be released to the public without first redacting this information. Therefore, we conclude they were not readily accessible to the public as required by the Clery Act. In addition, we found 79 crimes that had incident reports (e.g., grand larceny, petit larceny, harassment) but were either not listed or incorrectly listed on the 2006 (10) and 2007 (69) crime logs. The crime logs also did not include the disposition, when known, and in 2007, the date and time of crime occurrence.

For the remaining four campuses, we identified multiple instances where crime logs did not accurately reflect all crimes (consisting of both Clery and non-Clery reportable incidents) reported to the public safety departments.

- Hunter had incident reports for 194 crimes in 2006 and 253 crimes in 2007 that were not listed on the crime log;
- Queens had incident reports for 41 crimes in 2006 and 64 crimes in 2007 that were not listed on the crime log (Queens's officials informed us that they were previously aware of this problem.);
- Baruch had incident reports for 22 crimes in 2006 and 21 crimes in 2007 that were not listed on the crime log; and
- Medgar Evers had incident reports for 11 crimes in 2006 and 1 crime in 2007 that were not listed on the crime log.

We also identified examples where the 2006 and 2007 crimes logs lacked information required under the Clery Act at two of these colleges. At Medgar Evers, the crime logs did not include the location, nature, dates or disposition of crimes, when known, as required by the Clery Act. At Queens, the crime logs did not include details about the location of crimes as required by the Clery Act.

CUNY colleges' public safety officers are responsible for properly classifying crimes and accurately documenting the criminal elements of incidents. However, we found that a significant number of criminal incident reports prepared by the public safety officers at four of the colleges visited (John Jay, Baruch, Medgar Evers and Queens) were vague and lacked sufficient detail to accurately determine the elements of the specific crime in question. This was particularly the case for crimes classified (sometimes incorrectly) by college public safety as "larcenies" or "lost property." Queens experienced 61 larcenies that were inaccurately classified as "lost property" and, therefore, were not listed as crimes on the crime logs which was a major factor contributing to the omitted crime log entries. (A larceny

involves a theft from an area that is open to the general public and/or where the offender has legal access, and consequently, does not include the element of trespass.)

- Recommendations**
4. Instruct college public safety departments to accurately prepare incident reports and crime logs, particularly when documenting the elements of a crime, in an appropriate, clear and comprehensive manner.
  5. Provide specific guidance and assistance to colleges on maintaining daily crime logs and incident reports. Consider developing a standardized approach for colleges to follow.

**Public Property  
and Non-Campus  
Locations  
Reporting**

According to the Clery Handbook, “Public Property” is property near the campus that is not owned or controlled by the college and is not a private residence or business. Colleges are required to report offenses occurring on public property situated within the campus or bordering the campus (and easily accessible from the campus) on the ASR and to the Department. Public property is not intended to include the entire area surrounding the campus. The Clery Act requires colleges to report public property statistics to provide current and prospective students and employees with information about the safety and security of the surrounding campus community. Additionally, this information allows comparisons of the area where one college is located to the area of another college.

Therefore, it is important that all CUNY colleges be specific about the geographic parameters that constitute Public Property for Clery Act reporting purposes. Each college is required to specifically define its Public Property, make a reasonable, good-faith effort to obtain the required local law enforcement statistics, and accurately report statistics for crimes occurring within those boundaries. Without clearly defined geographic locations, it is not possible to provide consistent and accurate information about college safety, as intended by the Clery Act. We found that most of the six colleges we visited did not comply with these Clery Act requirements in 2006 and 2007. For example:

- Two of the colleges (Hunter and John Jay) did not define the geographic boundaries of their public property.
- Queens was the only one that provided evidence that it requested crime statistics from local police departments. Officials at Hunter and John Jay stated they verbally contacted the local police departments to request 2006 and 2007 crime statistics, but did not have supporting documentation. John Jay officials stated that there were no crimes to report. However, we contacted a New York Police Department precinct responsible for patrolling the areas surrounding John Jay, and obtained information

about two burglaries in 2006 that John Jay should have reported on its ASR but did not.

- Four colleges (Queens, CUNY School of Law, Baruch, and Medgar Evers) provided us with documentation showing that they received crime statistics from law enforcement. However, Baruch did not report one 2007 drug offense identified by the New York City Police Department on its ASR.

According to the Clery Handbook, “Non-campus Property” includes buildings or property owned or controlled by a student organization officially recognized by the college (regardless of whether it is located on or off campus) and buildings or properties that are owned or controlled by the college and not part of the main campus. Examples of such property include publicly owned athletic stadiums which are leased by the college for games and/or practice. We found four of the six visited colleges (Baruch, Hunter, John Jay and Medgar Evers) had not properly classified over 20 non-college athletic fields/parks/facilities utilized by their students as Non-campus locations. Therefore, none of the four colleges included crime statistics from these locations in their ASRs. Further, we determined the four colleges did not establish a process to obtain crime statistics for these locations. As a result, students and others visiting these facilities do not have the necessary information to make decisions relating to their safety.

**Recommendation**

6. Provide specific guidance and assistance to colleges on defining Public and Non-campus Property. Consider developing a standardized approach for campuses to follow.

**Guidance,  
Training and  
Follow-Up**

Based on our review, we concluded that officials at the 14 campuses did not adequately understand certain important aspects of the Clery Act’s prescribed requirements. As detailed previously, some colleges did not classify and/or report crimes in compliance with the Act. In addition, the ASRs of all 14 campuses lacked certain security statements as well as safety reporting requirements. Certain colleges were also either unaware of the need to (or unsure of how to) define their public and non-campus property. Consequently, we conclude that CUNY needs to provide guidance and training to the colleges to help ensure they comply with the Act. In addition, after guidance and training have been provided, University Administration should follow-up, as appropriate, with the colleges to determine if sufficient corrective actions have been taken to address specific matters, as detailed in this report. For example, CUNY could use the University Public Safety to assist campus public safety departments with compliance with Clery Act program and reporting requirements.

In addition, given the technical nature of many of the Clery Act’s requirements, it is important that campus personnel responsible for compliance with the Act

receive adequate training on proper Clery-related policies and procedures. At the outset of our audit, we determined that University Administration provided Clery Act compliance training to college officials in 1999 and 2000, and mentioned recent amendments to the Clery Act in a public safety officers' meeting in 2008. However, we found that staff at only three of the six schools we visited received comprehensive training in 2000. We believe that the lack of formal training on a regular basis likely contributed to the deficiencies that we identified in this report.

We conclude that University Administration should provide a formal training program on a regular basis to address Clery Act requirements and make the training available to all colleges.

### Internal Reviews of Clery Compliance

The University Auditor assists University Administration and CUNY campuses by providing objective management analyses through the performance of compliance and quality assurance appraisals. In 1999, the University Auditor issued Clery Act compliance audit reports at five of the 14 campuses. These reports evaluated the campuses' compliance with certain Clery Act requirements, such as reporting of calendar year 1997 crime statistics, record-keeping practices, notification to college communities of ASR availability, disclosure of required security statements and compiling of crime statistics from all required sources.

In 1999, the University Auditor identified serious deficiencies at two colleges we visited (Hunter and Medgar Evers) and issued corrective recommendations. While both colleges issued responses with corrective actions to the audit findings, we found continuing or similar issues identified by the University Auditor.

For example, the University Auditor cited Hunter for poor record-keeping practices, non-compliance with ASR distribution requirements, and not obtaining crime statistics from local police precincts. We found these same deficiencies continued ten years later (e.g., 447 crimes were documented on incident reports but not reported on crime logs - 194 crimes in 2006 and 253 crimes in 2007). Hunter continued to lack a direct notification to the campus community regarding the existence and availability of the ASR and still was not properly obtaining crime statistics from local police precincts. In addition, both colleges omitted required security statements from their ASR (18 by Hunter and 11 by Medgar Evers) and Hunter had not defined their public property. We determined that there was insufficient follow-up by appropriate staff to ensure the campuses implemented audit recommendations. Since there was no follow-up on audit recommendations,

University Auditors were unaware that both campuses' implementation of the audit recommendations was insufficient to comply with the Clery Act.

Further, University Administration annually compiles crime statistics submitted by colleges to Department. However, it has not established a process to obtain copies of the ASRs from all colleges. Without copies of the ASRs, University Administration is unable to verify that the statistics submitted to Department match those reported on the ASR. The lack of University Administration oversight in this area has resulted in inaccuracies in crime statistics reported by some colleges, which could affect the decision-making processes of current and prospective students as well as employees. The general public's reliance on the accuracy of statistics published by CUNY colleges may result in a skewed perception of the actual safety and security of CUNY college environments. Further, since there are discrepancies between statistics reported to Department and those reported in the ASR, the public will not be able to determine which, if either, of the statistics are correct. In addition, improperly reporting statistics exposes CUNY colleges to Department-imposed civil fines of up to \$27,500 for each significant Clery Act violation and suspension from federal Title IV student financial aid programs.

Given the significance of the Clery Act and the matters detailed in this report, we recommend that the University Auditor follow-up with campus public safety personnel to help ensure that they are in compliance with the Clery Act after sufficient formal guidance and training have been provided to them.

- Recommendations**
7. Provide comprehensive training to officials at all colleges on a regular basis to ensure officials understand and comply with Clery Act requirements, as well as any guidance and standardized approach set by University Administration.
  8. Require the University Auditor to perform follow-up audits to determine the implementation of recommendations detailed in the 1999 audit reports. Based on risk factors and available resources, the University Auditor should follow-up with noncompliant colleges to ensure the ASRs are made Clery Act compliant.

**CUNY Colleges  
Completeness of Annual Security Reports**

<u>College</u>	<u>Statistics Differ From Department Website*</u>	<u>Requirements Lacking***</u>		
		<u>Security Statements</u>	<u>Safety Requirements</u>	<u>Total</u>
1. Baruch College	X	9	9	18
2. Brooklyn College		12	1	13
3. City College	X	11	0	11
4. College of Staten Island		10	7	17
5. Hunter College	X	18	8	26
6. John Jay College of Criminal Justice	X	21	2	23
7. Lehman College		14	1	15
8. Medgar Evers College	X	11	1	12
9. New York City College of Technology	X	6	1	7
10. Queens College		15	1	16
11. York College		6	1	7
12. The Graduate Center**		10	1	11
13. CUNY School of Journalism		10	1	11
14. The CUNY School of Law		10	7	17

Note: X - indicates that there were discrepancies between the statistics reported in the college's ASR for crimes/violations/disciplinary actions and the data reported to Department.

\* Includes 2006 and 2007 calendar years

\*\* Includes School of Professional Studies

\*\*\* In certain instances, the colleges might have published statements related to one or more requirements. However, the statements did not sufficiently address the requirements.



## Agency Comments



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October 2, 2009

Mr. Steven E. Sossei  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State St., 11th Floor  
Albany, NY 12236

RE: Compliance with the Clery Act  
Report 2009-S-4

Dear Mr. Sossei:

The City University of New York has reviewed the findings and recommendations of the Office of the New York State Comptroller's Clery Act compliance audit, as presented in the above-captioned draft report. We appreciate the opportunity to offer the following response:

As a prefatory comment, the University is proud of the extraordinary job our public safety staff does in the maintenance of public order and the provision of public safety services for our 23 institutions and nearly half million degree-seeking and continuing education students, faculty and staff, and members of the public that utilize our campuses and surrounding environment for the pursuit of higher education, employment, and recreation. With campuses in all five boroughs of New York City, CUNY is an expanse of more than 300 buildings covering 26 million square feet on 640 acres. The University's present public safety program, launched in the early 1990's, following the tragic events at City College, and the cadre of Campus Peace Officers and Campus Security Assistants, in conjunction with the New York City Police Department, have done a prodigious job of reducing to demonstrably low levels the types of crimes that involve bodily harm or that threaten the personal well-being of our students, employees, and visitors. The relatively low levels of serious crime on our campuses belie the reality that we are a virtual municipality with respect to population size, infrastructure, and function. Our college communities benefit from public safety officers that receive hundreds of hours of training, and timely warning systems, such as CUNYAlert, to inform students and employees of imminent danger, have been of inestimable value in ensuring safety on our campuses.

We noted with great concern findings of underreported crimes at some of our colleges. While we were not so surprised that virtually all of the underreported crimes involved the classification of burglary, as opposed to violent crimes such as murder, sexual offenses, and robbery, we were nevertheless concerned that a finding of crime underreporting might suggest to readers of the audit report that CUNY colleges willfully underreport crimes in their Annual Security Report (ASR) to deceive prospective and current students and employees by giving them the impression that our colleges are safer than they in fact are.

INVEST IN 

After a thorough review, we have determined that there was no attempt at deception in the unfortunate underreporting of certain crimes:

The major crimes that were found to be underreported were primarily burglaries and not the more serious crimes.

We believe that had there been a willful attempt by the colleges to conceal crimes to make the colleges appear to be safer than they are, then the crimes that would have been underreported would have been those that are much more serious, such as those involving physical violence and those which would tend to make attendance at our colleges much less appealing. Violent crimes are arguably of the most concern to current and prospective students and employees. The audit report cites burglary as the most frequently underreported crime. While we take cognizance that one of the audited colleges was found to have underreported six aggravated assaults during the period under audit, the underreporting appears in several instances to have been attributable to a misclassification of aggravated assault to a lesser form of assault due to a failure of the campus security authority to whom the reports were made to include details in the incident report as to extent of any injuries sustained by the victims, a determining factor for aggravated assault. Inasmuch as “simple” assault is not reportable for Clery Act purposes, the misclassification resulted in an underreporting of those crimes.

\*  
Comment

By far, the most prevalent type of crime experienced on our campuses involves what is reported to campus security authorities as theft. With the ubiquity of cellular phones and portable digital music players among our students, numerous reports of theft are made to Public Safety even when these items are often merely misplaced. Nevertheless, campus security authorities must determine whether the facts of the reported theft fit the category of larceny (an unlawful taking of another’s property), which is not Clery Act reportable, or whether they fit the category of burglary (an unlawful trespass for the purpose of committing a felony or theft), which *is* Clery Act reportable.

What was regarded by the state auditors as underreporting was again in actuality misclassification of burglaries as larcenies due to the often lack sufficient facts to guide campus security authorities in distinguishing a burglary from a larceny.

The U.S. Department of Education’s Handbook for Campus Crime Reporting (Clery Handbook), the definitive guidebook to colleges for reporting under the Clery Act, uses as a basis for crime categorization the FBI Uniform Crime Reporting Handbook (UCR). It is the UCR that essentially describes larceny as an unlawful taking of property from another and a burglary as the unlawful entry into a structure, locked or unlocked, to commit a felony or a theft. The Clery Handbook further instructs that if it cannot be proven that an entry into a structure was lawful then the crime must be classified as a burglary and not a larceny. Thefts from areas that are areas of open access are not, by Clery Handbook definition, to be classified as burglaries, but as larcenies, as the necessary element of trespass would not exist. Because most campus facilities are a maze of private and non-private areas and rooms, these definitions offer only minimal guidance in distinguishing between larcenies and burglaries. They also suggest that when there is a theft on campus from an area or room, and one does not know who committed the theft so as to determine that the entry was lawful, then the default classification is to be burglary, a concept that is counterintuitive to many campus security authorities who come from law enforcement backgrounds where for practical purposes a determination of burglary requires more factual information in order to be established.

\* State Comptroller’s Comment:

We adjusted the numbers in this report based on information provided by CUNY officials.

Due in large part to a lack of understanding of the factual nuances of a particular theft that direct a classification of burglary and not larceny, and due to the frequent absence of enough factual information to determine whether a perpetrator's access to a particular area of a college was lawful or not (especially when the theft occurred during normal business hours), many thefts that the Clery Handbook instructs to be classified as burglaries were mistakenly (justifiably or not) classified by college security authorities as larcenies and were therefore not included in the college's ASR.

To illustrate: if a cell phone is stolen from a table just outside the door of a private office in student lounge, that theft should, by Clery Handbook definition, be classified as a larceny and should not be reported in the college ASR. If, however, someone goes inside that private office through an unlocked door and takes a cellular phone from a table just inside the doorway, the Clery Handbook would require that second theft to be classified as a burglary and it *would* be reported in the college's ASR. That many of our colleges would have classified both incidents as larcenies because of the lack of sufficient information to determine whether the perpetrator might have had lawful access to the office (such as with a janitor assigned to clean the office during the time frame in which the theft was thought to have occurred), and would not have reported either incident in their ASR, explains in large measure, we believe, the high percentage of underreporting of burglaries cited by the state auditors.

The State Auditors cited instances in which crimes were actually *over-reported* by the colleges.

Under the subheading of Inconsistent Statistical Reporting, the audit report cites five instances in which three of our colleges reported a greater number of serious crimes directly to the U.S. Department of Education for inclusion on its website than they reported in their ASR's. We believe that a college intending to deceive the public by obscuring crimes would never allow such a situation to occur but would ensure that the statistics published in the arguably more accessible medium (the D.O.E. website) would be equal to or less than those published in the ASR. We believe that if anything, these examples of over-reporting were attributable to faulty record keeping, and we believe they demonstrate that the instances of underreporting cited in the audit report were similarly unintentional.

The following section contains the University's response to the recommendations offered in the draft audit report:

#### Recommendation

1. Adopt practices to ensure colleges are complying with Clery Act requirements each year. At a minimum, University Administration should annually receive the ASR from each college and ensure it is properly prepared and the crime statistics reported agree with those the college reported.

#### University Response

1. The University agrees that it must strengthen its practices with respect to complying with the letter of the Clery Act. Specifically, the University is committed to making the following improvements:
  - a. The University will engage an outside Consultant to advise the University and assist in developing a plan to bring all colleges into full compliance with the Clery Act.
  - b. The University will establish a panel consisting of University attorneys to help colleges work through any conflicts between local laws and required reporting under Clery Act definitions.

- c. The University Security Director will annually receive and review the Annual Security Report from each campus. Reports will be given a second review by Special Counsel to the Chancellor to ensure that the reports are properly prepared and the crime statistics agree with those the college has reported to the U.S. Department of Education.

Recommendation:

2. Provide specific guidance and assistance to colleges on preparing ASR's. Consider developing a standardized approach for colleges to follow.

University Response:

2. The University agrees with this recommendation and will designate a Chief Compliance Officer to provide guidance and assistance to the colleges on proper Annual Security Report preparation. The University will also continue the training program that began in July 2009 to provide assistance to the colleges on maintaining their daily crime logs and incident reports, and the University will standardize Clery Act reporting across the colleges.

Recommendation:

3. Require colleges noted in this report that have inaccurate information in their current ASR's or reported inaccurate information to Department to correct such inaccuracies.

University Response:

3. The University agrees with this recommendation and has requested that the colleges correct any inaccurate prior-year information in their current Annual Security Report and that they correct all inaccuracies reported to the U.S. Department of Education.

Recommendations:

4. Instruct college public safety departments to accurately prepare incident reports and crime logs, particularly when documenting the elements of a crime, in an appropriate, clear and comprehensive manner.
5. Provide specific guidance and assistance to colleges on maintaining daily crime logs and incident reports. Consider developing a standardized approach for colleges to follow.

University Response:

- 4 and 5. Similar to our response to Recommendation #2, above, the University believes that compliance in this area can greatly improved by specific guidance and additional training opportunities. The University will continue the training program it began in July 2009 and college security authorities will receive instruction on how to properly prepare incident reports and crime logs so that enough factual information about crimes will exist to permit accurate ASR and Department of Education classification.

In addition, the University will completely standardize across the colleges incident reporting, daily crime logs, security policy statement presentation, and ASR reporting, so as to ensure uniform quality and to facilitate review.

The University will require the college presidents to personally certify that all crime report submissions have been reviewed and that they comply with the Clery Act requirements.

## Recommendation:

6. Provide specific guidance and assistance to colleges on defining Public and Non-campus Property. Consider developing a standardized approach for campuses to follow.

## University Response:

6. The University agrees with this recommendation and will provide guidance and assistance to the colleges in the development of maps showing public and non-campus property that define the colleges' geographical boundaries for Clery reporting purposes.

## Recommendation:

7. Provide comprehensive training to officials at all colleges on a regular basis to ensure officials understand and comply with Clery Act requirements, as well as any guidance and standardized approach set by University Administration.

## University Response:

7. The University agrees with this recommendation and will require that college officials and administrators participate in the training opportunities provided through the University.

## Recommendation:

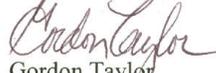
8. Require the University Auditor to perform follow-up audits to determine the implementation of recommendations detailed in the 1999 audit reports. Based on risk factors and available resources, the University Auditor should follow-up with noncompliant colleges to ensure the ASR's are made Clery Act compliant.

## University Response:

8. The University agrees with this recommendation. University Internal Audit will develop a protocol and perform regular follow-up audits to ensure University-wide Clery Act compliance.

Thank you again for the opportunity to respond to the draft audit report. If I can answer any questions you might have, please do not hesitate to contact me.

Very truly yours,



Gordon Taylor  
Director

cc: Chancellor Matthew Goldstein  
Executive Vice Chancellor and COO Allan H. Dobrin  
Senior Vice Chancellor and General Counsel Frederick P. Schaffer  
University Director of Public Safety William G. Barry

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